

# Decision Notice 129/2021

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## Independent Review of Sexual Abuse in Scottish Football

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**The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 202100081**



Scottish Information  
Commissioner

## Summary

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The Ministers were asked for all information they held associated with the decision to select the SFA (the Scottish Football Association) as the body responsible for carrying out the task of the Independent Review of Sexual Abuse in Scottish Football.

The Ministers stated that no information was held by them and suggested that the Applicant contact the SFA.

The Commissioner investigated and found that the Ministers did not hold any information falling within the scope of the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 8 February 2020, the Applicant made a request for information to the Scottish Ministers (the Ministers). The information requested was:

*All Government and Civil Service records associated with the decision to select the SFA as the body responsible for carrying out the task of the Independent Review of Sexual Abuse in Scottish Football<sup>1</sup>. I specifically request all correspondence, letters, memos, emails and handwritten notes pertaining to the decision.*

2. The Ministers responded on 17 March 2020. They applied section 17(1) of FOISA, stating that they held no information. They also stated that the decision to commission Martin Henry to undertake an independent review was the responsibility of the SFA and suggested that the Applicant contact them for information.

3. On the same day, the Applicant wrote to the Ministers requesting a review of their decision as she did not believe that no information was held. She referred to this television interview with Scotland's Depute First Minister John Swinney<sup>2</sup> and stated:

*Mr Swinney was most definite about the fact that abuse in football would not be included in the established Government inquiry. He was very clear on the need for independence within an SFA inquiry.*

4. Following an application to the Commissioner, the Ministers notified the Applicant of the outcome of their review on 7 December 2020 and upheld their reliance on section 17(1) of FOISA.

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<sup>1</sup> <https://www.scottishfa.co.uk/media/7516/independent-review-of-sexual-abuse-in-scottish-football-final-report.pdf>

<sup>2</sup> <https://www.bbc.co.uk/news/av/uk-scotland-38282506>

5. On 18 January 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Ministers' review because she believed that the information was held. She submitted that, by implication, the Depute First Minister, made a decision during a TV interview to call upon the SFA to carry out a review into Historical Child Abuse within Scottish Football.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 11 February 2021, the Ministers were notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and to answer specific questions. These related to their reasoning for stating that no information was held and the searches that they carried out.
9. The Applicant was also asked for any information she wished to provide in support of her application.
10. The Ministers subsequently provided submissions to the investigating officer.

## **Commissioner's analysis and findings**

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11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Ministers. He is satisfied that no matter of relevance has been overlooked.

### **Submissions from the Applicant**

12. The Applicant submitted that the Ministers' initial response and review response, claiming that the Scottish Government did not hold the information requested was, by implication, incorrect. The Applicant stated that during the Depute First Minister's television interview (referred to above) he made a decision to call upon the SFA to carry out a review into Historical Child Abuse within Scottish Football. The Applicant stated that it was simply not plausible that no correspondence, no minutes or notes of discussions were held.

### **Submissions from the Ministers**

13. The Ministers stated that there had not been any previous discussions between them and the SFA about the SFA commissioning or conducting a review into historical sexual abuse in football prior to Mr Swinney's comment during the televised interview. If any discussions between Ministers and the SFA about an independent inquiry into sexual abuse in Scottish football *had* taken place, officials working within Active Scotland Division – which leads on football – would have been requested to provide a briefing to Ministers on the subject. However, no briefing request was made to the Football Strategic Lead, Active Scotland, or any other relevant policy areas, and no such briefing or information was issued to Ministers ahead of the interview.

14. Furthermore, there had been no discussions directly between the Ministers and the SFA about this specific issue in advance of the interview, and therefore no information existed in this respect. The Ministers stated that, of course, they work closely with the SFA on a range of issues. However, the SFA operates independently of the government and, as the governing body for football – with a wider role as the guardian of the game – has lead responsibility for football in Scotland. As such, the decision on commissioning or conducting a review into historic sexual abuse in football rested with the SFA.

### *Searches*

15. The Ministers explained that the initial case-handler was the policy official with lead responsibility for football within the Scottish Government at the time of receiving the request and, as such, had a good working knowledge and understanding of the information held. He was aware that it was the SFA, as the governing body for football, which had made the decision to conduct a review into historical sexual abuse in Scotland, and he therefore knew that the Scottish Government would not hold any information relating to that decision.
16. However, for completeness, officials in Active Scotland completed searches of their electronic information management system (eRDM) and of the relevant officials' outlook email accounts, during the appeal investigation. The eRDM searches were of the "Football: Advice and Policy" folder as that contained all information in relation to policy documents relating to football, and that folder would be most likely to hold any relevant information. The search terms used when conducting these searches were: "football", "sexual", and "abuse", and these searches did not return any documents falling within scope of the request.
17. In addition, the Strategic Football Lead and the Policy Officer within Active Scotland Division searched their outlook email and personal accounts for any further material relating to this issue, as they were the policy leads on football and would be most likely to hold any relevant information. These further searches did not identify any relevant information.

### **The Commissioner's findings**

18. In reaching his conclusions in this case the Commissioner has taken account of the fact that it is widely known and has been stated in the public domain, that the Independent Review of Sexual Abuse in Scottish Football was led by an independent party, former children's charity executive, Martin Henry, and was commissioned by the SFA. The review was not commissioned by the Ministers.
19. The Commissioner is of the view that it is illogical to assume that because the Depute First Minister made comments on a television programme (in response to a specific question on the matter by the interviewer) this equates to his "making a decision to call upon the SFA to carry out a review into Historical Child Abuse within Scottish Football", as suggested by the Applicant. The Commissioner also notes that at the outset of this request being made the Ministers did in fact advise the Applicant to contact the SFA directly as the SFA had commissioned the review.
20. In the light of the above, and taking account of the Ministers' explanations and searches which failed to find any relevant information, the Commissioner is satisfied that the information sought is not held by the Ministers. He therefore upholds the Ministers' application of section 17(1) of FOISA.

## **Decision**

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The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

## **Appeal**

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Should either the Applicant or the Ministers wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**1 September 2021**

## Appendix 1: Relevant statutory provisions

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### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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#### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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